

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(SAN FRANCISCO DIVISION)

In re:

VIAGRA (SILDENAFIL CITRATE)  
PRODUCTS LIABILITY LITIGATION

Master File No.: 3:16-md-02691-RS

~~[PROPOSED]~~ MDL ORDER NO: 2  
(ORDER APPOINTING LEADERSHIP  
STRUCTURE)

This Document Relates to: ALL ACTIONS

This Order is intended to create a leadership structure for plaintiffs' counsel in order to organize, simplify, and streamline the handling of these matters on behalf of all plaintiffs, consistent with the fair administration of justice.

**1. Lead Counsel**

The Court hereby appoints the following individual as Lead Counsel:

Ernest Cory  
CORY WATSON, P.C.  
2131 Magnolia Avenue South  
Birmingham, AL 35205  
Telephone: (205) 328-2200  
Facsimile: (205) 324-7896  
Email: ecory@corywatson.com

The responsibilities of Lead Counsel are set forth in section 8 of this Order.

**2. Liaison Counsel**

The Court hereby appoints the following individual as Liaison Counsel:

Rachel Abrams  
LEVIN SIMES, LLP  
44 Montgomery Street, 32<sup>nd</sup> Floor  
San Francisco, CA, 94104  
Telephone: (415) 426-3000  
Facsimile: (415) 426-3001  
Email: rabrams@levinsimes.com

The responsibilities of Liaison Counsel are set forth in section 9 of this Order.

**3. Plaintiff's Executive Committee**

The Court hereby appoints the following individuals to the Plaintiffs' Executive Committee ("PEC"):

Ernest Cory  
CORY WATSON, P.C.  
2131 Magnolia Avenue South  
Birmingham, AL 35205  
Telephone: (205) 328-2200  
Facsimile: (205) 324-7896  
Email: ecory@corywatson.com

Kimberly Barone Baden  
MOTLEY RICE LLC  
28 Bridgestone Boulevard  
Mount Pleasant, SC 29464  
Telephone: (843) 216-9265  
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Martin D. Crump  
DAVIS & CRUMP, P.C.  
2601 14th Street  
Gulfport, MS 39501  
Telephone: (228) 863-6000  
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Munir R. Meghjee  
ROBINS KAPLAN LLP  
800 LaSalle Avenue, Suite 2800  
Minneapolis, MN 55402  
Telephone: (612) 349-8500  
Facsimile: (612) 339-4181  
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Kristian Rasmussen  
CORY WATSON, P.C.  
2131 Magnolia Avenue South  
Birmingham, AL 35205  
Telephone: (205) 328-2200  
Facsimile: (205) 324-7896  
Email: krasmussen@corywatson.com

The responsibilities of the PSC are set forth in Section 10 of this Order.

**4. Plaintiffs' Steering Committee**

The Court hereby appoints the following individuals to the Plaintiffs' Steering Committee ("PSC"):

Kelly A. Fitzpatrick  
VENTURA RIBEIRO & SMITH  
280 Park Avenue S, Suite 13A  
New York, NY 10010  
Telephone: (212) 673-6669  
Facsimile: (203) 791-9264  
Email: kfitzpatrick@vrslaw.com

Yvonne M. Flaherty  
LOCKRIDGE GRINDAL NAUEN PLLP  
100 Washington Avenue S, Suite 2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
Email: ymflaherty@locklaw.com

Lisa A. Gorshe  
JOHNSON BECKER, PLLC  
33 South Sixth Street, Suite 4530  
Minneapolis, MN 55402  
Telephone: (612) 436-1800  
Facsimile: (612) 436-1801  
Email: lgorshe@johnsonbecker.com

Jennifer R. Liakos  
Napoli Shkolnik PLLC  
525 South Douglas Street, Suite 260  
El Segundo, CA 90245  
Telephone: (310) 331-8224  
Facsimile: (310) 736-2877  
Email: jliakos@napolilaw.com

Michael B. Lynch  
THE MICHAEL BRADY LYNCH FIRM  
127 West Fairbanks Ave. #528  
Winter Park, Florida 32789  
Telephone: (877) 513-9517  
Facsimile: (321) 972-3568  
Email: michael@mblynchfirm.com

Scott A. Morgan  
MORGAN LAW FIRM, LTD.  
55 West Wacker Drive, Suite 900  
Chicago, IL 60601  
Telephone: (312) 327-3386

Facsimile: (888) 396-2478  
Email: smorgan@smorgan-law.com

J. Gordon Rudd, Jr.  
Minnesota Bar No.: 222082  
ZIMMERMAN REED, PLLP  
1100 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Telephone: (612) 341-0400  
Facsimile: (612) 341-0844  
Email: gordon.rudd@zimmreed.com

The responsibilities of the PSC are set forth in Section 11 of this Order.

#### **5. State Liaison Counsel**

The Court hereby appoints the following individual as State Liaison Counsel:

John J. Driscoll  
THE DRISCOLL FIRM, P.C.  
One Metropolitan Square  
211 N. Broadway, 40th Floor  
St. Louis, MO 63102  
Telephone: (314) 932-3232  
Facsimile: (314) 932-3233  
Email: john@thedriscollfirm.com

#### **6. Changes in Membership**

These appointments are personal in nature, and may not be changed without court order. Accordingly, this Court looks to these counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace them, on their own request, or of this Court's own motion, should they become unable to do so.

#### **7. Designated Counsel**

The PSC may appoint other qualified counsel to perform legal services for the common benefit of plaintiffs ("Designated Counsel").

#### **8. Responsibilities of Lead Counsel**

Lead Counsel shall have the following responsibilities:

1. any and all responsibilities as designated by the Court;
2. to chair the PEC, which shall be generally responsible for coordinating the activities of plaintiffs' counsel during pretrial proceedings;

3. to present, after consultation with the PEC, PSC, and other counsel as may be appropriate, personally or by designee, the position of the plaintiffs on any matter arising during pretrial proceedings;
4. to delegate specific tasks to other counsel to ensure that pretrial preparation for the plaintiffs is conducted effectively, efficiently, and economically, including the creation of subject matter-specific or other working groups;
5. to prepare and distribute to the parties periodic status reports, as appropriate;
6. to prepare and to ensure the preparation by others of adequate and reasonable time and disbursement records where appropriate;
7. to coordinate and lead discussions with the Court, other plaintiffs' counsel, defense counsel, and non-parties to ensure that court orders are followed, schedules are met, discovery is conducted and provided consistent with the requirements of Fed. R. Civ. P. 26, unnecessary expenditures of time and funds are avoided, and any negotiations are reasonably efficient and productive;
8. to establish and maintain, in conjunction with the PSC and to the extent deemed desirable by the PSC, a physical or virtual depository of documents located within the Court's jurisdiction, or otherwise accessible to all plaintiffs' counsel;
9. to coordinate, with the assistance of Liaison Counsel and State Liaison Counsel, with counsel in related state-court litigation, in order to avoid duplicative discovery, including minimizing the number of depositions taken of each witness, minimizing the number of lawyers who question witnesses at depositions, and reducing duplicative questioning;
10. to assist in providing access to participating state-court counsel to any common-benefit document depository and common-benefit work-product, in accordance with the terms of any common-benefit orders entered by the Court;

11. to establish and maintain an comprehensive service list of counsel of record and promptly advise the Court of any changes; and
12. to participate in any class or group settlement discussions.

#### **9. Responsibilities of Liaison Counsel**

Liaison Counsel shall have the following responsibilities:

1. any and all responsibilities as designated by the Court;
2. to receive, on behalf of the attorneys for all plaintiffs, orders, notices, and correspondence from this Court and acting as the primary contact between the Court and plaintiffs' counsel;
3. where practicable, to communicate with State Liaison Counsel to ascertain status of related state-court actions;
4. to provide information about related state-court proceedings to the Court and counsel; and
5. to assist lead counsel in coordinating the efforts of all counsel in all pending cases, whether part of this MDL proceeding or not.

#### **10. Responsibilities of PEC**

The PEC shall have the following responsibilities:

1. to perform necessary administrative and logistic functions of the PEC and carry out any and all responsibilities as designated by the Court;
2. to coordinate and oversee the responsibilities of the PSC set forth below;
3. to schedule PSC meetings and keep minutes or transcripts of these meetings;
4. to appear at periodic court noticed status conferences and hearings;
5. to sign and file pleadings relating to all actions;
6. to bind the PSC in scheduling depositions, setting agendas, entering into stipulations, and in other necessary interactions with defense counsel;
7. to create such committees and subcommittees of the PSC as are necessary to efficiently carry out its responsibilities, to designate members thereof, and to delegate common benefit work responsibilities to selected counsel (including

non-members of the PSC), as may be required for the common benefit of plaintiffs; and

8. the PEC will share in the responsibilities of the PSC as outlined below.

# **11. Responsibilities of PSC**

The PSC shall have the following responsibilities:

## **A. Discovery**

1. to initiate, coordinate, and conduct all pretrial discovery on behalf of plaintiffs in all actions subject to this Order;
2. to develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all plaintiffs;
3. to cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas concerning any witnesses and documents needed to prepare for the trial of this litigation (similar requests, motions, and subpoenas may be caused to be issued by the PSC upon written request by an individual attorney in order to assist him or her in the preparation of the pretrial stages of his or her client's particular claims); and
4. to conduct all discovery, by members or their designees approved by Lead Counsel, in a coordinated and consolidated manner on behalf and for the benefit of all plaintiffs.

## **B. Hearings and Meetings**

1. to call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court;
2. to initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matters concerning pretrial proceedings;
3. to examine witnesses and introduce evidence at hearings on behalf of plaintiffs; and
4. to speak for all plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject to the right of any plaintiff's counsel to

present non-repetitive individual or different positions.

**C. Trial**

1. to coordinate the selection, management, and presentation of any common issue, “bellwether,” and/or “test” case trials.

**D. Settlement and Miscellaneous**

1. any and all responsibilities as designated by the Court;
2. to negotiate and propose settlement of cases on behalf of plaintiffs or plaintiff groups, including exploring and, where appropriate, pursuing all settlement options concerning any claim or portion of any case filed in this litigation;
3. to litigate any motions presented to the Court that involve matters within the responsibilities of the PSC;
4. to negotiate and enter into stipulations with defendants concerning this litigation, subject where appropriate to the objections of individual counsel and/or the approval of the Court;
5. to maintain adequate files of all discovery and pretrial matters, including establishing and maintaining a document or exhibit depository, in either real or virtual format, and having those documents available, under reasonable terms and conditions, for examination by all plaintiffs’ counsel; and
6. to perform any task necessary and proper for the PSC to accomplish its responsibilities, including organizing subcommittees or workgroups comprised of plaintiffs’ attorneys not on the PSC and assigning them tasks consistent with the duties of the PSC.

**12. Privileged Communications**

Because cooperation among counsel and the parties is essential for the orderly and expeditious resolution of the litigation, the communication, transmission, or dissemination of information among plaintiffs’ counsel shall be subject to the joint attorney-client privilege and the protections afforded by the attorney work-product doctrine; provided, however, that the conditions necessary to create such a privilege or protection have been satisfied and the



1 privilege or protection has not been waived.

2 **IT IS SO ORDERED.**

3 Dated: 6/15/16

A handwritten signature in blue ink, appearing to read "Richard Seeborg", is written over a horizontal line.

RICHARD SEEBORG  
United States District Judge